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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

**PLAINTIFFS' RESPONSE TO
INTERESTED PARTY'S OPPOSITION
TO ADMINISTRATIVE MOTION TO
SHORTEN TIME PURSUANT TO
CIVIL LOCAL RULE 6-3 FOR THE
HEARING OF PLAINTIFFS'
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hon. Claudia Wilken

1 Plaintiffs respectfully submit this response to the Opposition to Plaintiffs' Unopposed
 2 Administrative Motion to Shorten Time Pursuant to Civil Local Rule 6-3 for the Hearing on
 3 Plaintiffs' Unopposed Motion for Preliminary Settlement Approval of Class Action Settlement
 4 (ECF No. 454).

5 In Plaintiffs' motion, Class Counsel explained that there is good reason to advance the
 6 hearing date because it would allow the parties to begin as soon as possible the process of
 7 identifying contact information for the approximately 250,000 potential class members who will
 8 receive notice of the proposed settlement. Defendants did not oppose this request as the parties both
 9 recognize that the notice process will be time consuming and cannot begin until preliminary
 10 approval is granted. To give just one example of the problems with delay, Defendants' member
 11 institutions are waiting to notify class members under the Family Educational Rights and Privacy
 12 Act ("FERPA") statute until after the Court grants preliminary approval and prior to providing any
 13 contact information to Plaintiffs. Thus, a longer delay until the hearing will result in a longer delay
 14 until Plaintiffs will be able to gather the data they need to initiate the proposed notice program.

15 *Fontenot* counsel argue that the hearing date for preliminary approval in *In re College*
 16 *Athlete NIL Litigation* should not be moved because they want more time to "scrutinize the
 17 proposed settlement" and "determine whether a response is called for" prior to the hearing.¹ As an
 18 initial matter, to the extent the *Fontenot* lawyers have publicly stated their intention to oppose the
 19 settlement in this case in an effort to keep their own, overlapping case alive and to pursue some
 20 "better" form of relief,² that is not a proper basis on which to object. In overruling similar
 21 objections, the Ninth Circuit has noted, "Settlement is the offspring of compromise; the question
 22 we address is not whether the final product could be prettier, smarter or snazzier, but whether it is
 23 fair, adequate and free from collusion."³ Moreover, it is not necessary for the *Fontenot* plaintiffs to
 24 file any response before the preliminary approval hearing or to otherwise participate in the hearing,

25 _____
 26 ¹ *Fontenot* counsel have not opposed Plaintiffs' motion to advance the preliminary approval
 hearing date in the *Hubbard* case.

27 ² See i.e., *KESSLER DEFENDS HOUSE V. NCAA DEAL AMID FONTENOT CASE FLAK*,
 Sportico.com (May 22, 2024), [https://www.sportico.com/leagues/college-sports/2024/kessler-](https://www.sportico.com/leagues/college-sports/2024/kessler-house-ncaa-deal-fontenot-1234780034/)
 28 [house-ncaa-deal-fontenot-1234780034/](https://www.sportico.com/leagues/college-sports/2024/kessler-house-ncaa-deal-fontenot-1234780034/).

³ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

1 in order to ensure that their interests are protected. If the Court grants preliminary approval, the
2 *Fontenot* plaintiffs—and all other members of the proposed settlement classes—will receive notice
3 and will have plenty of time to “scrutinize” the settlement (and file objections if they so choose)
4 prior to final approval. Advancing the date of the preliminary approval hearing would not in any
5 way impair the *Fontenot* plaintiffs’ rights, but it would delay the efforts the parties here are
6 undertaking to ensure that *all* members of the proposed classes receive notice and have a fair
7 opportunity to be heard.

8 Based on these facts, as well as those set forth in detail in Class Plaintiffs’ Motion, Plaintiffs
9 respectfully ask the Court to set the hearing at the earliest date convenient to the Court.

Dated: August 2, 2024

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Steve W. Berman
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